

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

LISA MARIE BERNARDUCCI,

Plaintiff,

v.

CAUSE NO.: 1:18-CV-38-TLS-JPK

ANDREW M. SAUL, Commissioner of the
Social Security Administration,

Defendant.

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Attorney's Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 29], filed on December 8, 2020. The Plaintiff's attorney requests to be paid \$3,162.15 pursuant to 42 U.S.C. § 406(b). Pl.'s Mot. 2, ECF No. 29. The Defendant has filed a Response, stating that he "neither supports nor opposes Plaintiff's counsel's request." Def.'s Resp., ECF No. 30. The Plaintiff has not filed a Reply, and the time to do so has passed. For the reasons stated below, the Plaintiff's Motion is DENIED without prejudice.

The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see* 42 U.S.C § 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the "character of the representation and the results the representative achieved." *Gisbrecht*, 535 U.S. at 808.

Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Id.*

However, the Plaintiff's attorney's Motion requests a § 406(b) award "with leave permitted to petition for an additional 406(b) amount." Pl.'s Mot. 2, ¶ 7. The Plaintiff's Motion suggests this request hinges on the outcome of the determination of the § 406(a) fees. *Id.* at ¶¶ 6–7. However, the Court cannot conduct a reasonableness analysis without knowing the full amount the Plaintiff's attorney is requesting, and so cannot award any amount under the Motion's stated condition.

CONCLUSION

For the reasons stated above, the Court DENIES without prejudice the Plaintiff's Attorney's Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 29] with leave to refile the motion either with a single, definite request for § 406(b) fees that will not require the filing of a petition for an additional § 406(b) fee or once the matter of § 406(a) fees is resolved.

SO ORDERED on January 11, 2021.

s/ Theresa L. Springmann
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT